

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
CENTRAL DIVISION

In Re:

TELEXFREE, LLC ,
TELEXFREE, INC.,
TELEXFREE FINANCIAL, INC.,

Debtors.

Chapter 11

Case No. 14-40987-MSH

Case No. 14-40988-MSH

Case No. 14-40989-MSH

Jointly Administered

**MOTION BY CHAPTER 11 TRUSTEE FOR ENTRY OF ORDER FIXING BAR DATE
FOR FILING PROOFS OF CLAIM, APPROVING FORM AND MANNER OF
PROVIDING NOTICE, DIRECTING THAT CLAIMS BE FILED ELECTRONICALLY,
AND APPROVING CONTENT OF ELECTRONIC PROOFS OF CLAIM**

To the Honorable Melvin S. Hoffman, Chief United States Bankruptcy Judge:

Stephen B. Darr, the duly appointed Chapter 11 trustee (the "Trustee") of the bankruptcy estates of TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, Inc. (collectively, the "Debtors" or "TelexFree"), respectfully requests entry of an order fixing a bar date for the filing of proofs of claim pursuant to Rule 3003(c)(3) of the Federal Rules of Bankruptcy Procedure, fixing the form and manner of providing notice thereof, directing that all claims be filed electronically, and approving the content of electronic proofs of claim to be completed by claimants for filing claims in these cases.

In support of this motion (the "Motion"), the Trustee states as follows:

INTRODUCTION

As further set forth in the contemporaneously filed *Motion by Chapter 11 Trustee for Entry of Order Finding that Debtors Engaged in Ponzi and Pyramid Scheme and Related Relief* (the "Ponzi Scheme Motion"), the Debtors ostensibly operated a multi-level marketing company



engaged in the sale of voice over internet service (“VoIP Packages”), but the Debtors’ operations were actually a massive Ponzi/pyramid scheme that could involve the largest number of Participants (as hereafter defined) of any reported Ponzi/pyramid scheme in United States history. The scheme appears to have involved as many as a million or more Participants from multiple countries who established approximately 11,000,000 accounts with the Debtors (“User Accounts”). The User Accounts reflected financial transactions with an aggregate value of approximately \$3,000,000,000 during the two years, approximately, of the Debtors’ operation of their scheme.

The Trustee by this Motion seeks three principal forms of relief: (i) the establishment of a bar date (“Bar Date”) for all creditors to file proofs of claim, including claims held by governmental units, which bar date shall be not less than ninety (90) days after the Trustee has provided notice that the portal hosting the electronic proof of claim process is operational; (ii) the approval of the form and manner of providing notice of the Bar Date, including electronic and public notice; and (iii) approval of the content of the electronic proof of claim to be filed by Participants (the “Participant ePOC”) and the electronic proof of claim to be filed by all claimants other than Participants (the “Standard ePOC” and, together, the “ePOC's”), as the sole and exclusive method for all creditors to file claims in these cases.

In order to reconcile Participants’ claims with the Debtors’ electronic records, the proposed Participant ePOC requests that Participants (i) provide and/or confirm the same information that they were asked to provide when opening their User Accounts with the Debtors, and (ii) itemize and/or confirm payments Participants made to, and received from, the Debtors as well as payments Participants made to, and received from, other Participants in connection with the Debtors’ sale of membership plans.

Subject to allowance of the Ponzi Scheme Motion, any claim or portion of claim of Participants based upon accumulated credits in Participants' User Accounts as of the Petition Date will be disallowed and claims will be determined on a 'net equity' basis. The Ponzi Scheme Motion also seeks a determination that the Debtors are joint tortfeasors and are jointly and severally liable for the claims of Participants. Subject to allowance of the Ponzi Scheme Motion, Participants shall only be required to file a single Participant ePOC, which will constitute a claim against each of the Debtors' estates.¹

I. JURISDICTION

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§157 and 1334.
2. This is a core proceeding pursuant to 28 U.S.C. §§157(b).
3. Venue of these cases and this Motion in this District is proper pursuant to 28 U.S.C. §1408.
4. The bases for the relief requested herein are 11 U.S.C. §§105(a), 501, and Federal Rules of Bankruptcy Procedure 2002, 3003, and 9009.

II. CASE BACKGROUND AND PROCEDURAL POSTURE

5. TelexFree, Inc. is a Massachusetts corporation that, prior to February 2012, was known as Common Cents Communications, Inc. ("Common Cents"). Common Cents was incorporated in 2002 by Carlos Wanzeler, James Merrill, and Steven Labriola. Upon information and belief, the shareholders of TelexFree, Inc. are Wanzeler and Merrill.

¹ A finding of joint and several liability for the claims of Participants does not effect a substantive consolidation of the Debtors' estates. Grounds may exist for the Trustee to seek substantive consolidation of the Debtors' estates and the Trustee reserves the right to seek same. In the event of substantive consolidation, Participants will be deemed to have a single claim against the consolidated estate.

6. TelexFree, LLC is a Nevada corporation that was incorporated by Wanzeler, Merrill, and Carlos Costa, a citizen of Brazil, in July 2012 and registered to do business in Massachusetts in April 2013. Upon information and belief, the members of TelexFree, LLC are Wanzeler and Merrill.

7. TelexFree Financial, Inc. is a Florida corporation formed in 2013. Upon information and belief, TelexFree Financial, Inc. is wholly owned by TelexFree, LLC.

8. In the late 1990s, Wanzeler and Merrill became sales agents for WorldxChange, a multi-level marketing company that sold inexpensive long-distance telephone service using sales agents to recruit other sales agents as well as customers. In 2002, Wanzeler, Merrill, and Labriola incorporated Common Cents as a vehicle for their sales efforts on behalf of WorldxChange. In 2003, the three individuals ceased working with WorldxChange after it was acquired by another company and discontinued the multi-level marketing program.

9. In early 2012, Wanzeler, Merrill, and Costa changed the name of Common Cents to TelexFree, Inc. apparently for the purpose of using a multi-level marketing platform to sell VoIP Packages. In July 2012, Wanzeler, Merrill, and Costa formed TelexFree, LLC, purportedly to handle TelexFree transactions outside Massachusetts. The Debtors commenced operating the pyramid scheme in the spring of 2012.

10. On April 13, 2014 (the "Petition Date"), each of the Debtors filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code ("Bankruptcy Code") with the United States Bankruptcy Court for the District of Nevada ("the Nevada Bankruptcy Court").

11. The Debtors initially operated as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

12. On the Petition Date, the Debtors filed a motion for joint administration of the cases, with TelexFree, LLC designated as the lead case. By order dated April 24, 2014, the order for joint administration was approved.

13. Prior to the filings, the Commonwealth of Massachusetts, Office of Secretary of State, Securities Division (“MSD”) commenced an investigation into the Debtors’ business practices.

14. On or about April 15, 2014, the MSD commenced an administrative proceeding against the Debtors. Also on April 15, 2014, the Securities and Exchange Commission (“SEC”) commenced an action against the Debtors and others in the United States District Court for the District of Massachusetts. The foregoing actions alleged, among other things, that the Debtors were engaged in an illegal Ponzi/pyramid scheme and the fraudulent unregistered offering of securities. Substantially contemporaneously with the commencement of the SEC action, Homeland Securities Investigation (“HSI”) seized substantially all of the Debtors’ assets, books, and records.

15. On or about April 22, 2014, the Office of the United States Trustee filed a motion for the appointment of a Chapter 11 Trustee based upon the allegations of illegal activity.

16. On April 23, 2014, the SEC filed a motion to transfer venue of the cases to the United States Bankruptcy Court for the District of Massachusetts (the “Court”). By order dated May 6, 2014, the motion to change venue was approved. The cases were transferred to the Court on May 9, 2014.

17. On May 30, 2014, this Court allowed the United States Trustee’s motion to appoint a Chapter 11 trustee, and the Trustee was appointed on June 6, 2014.

18. The Debtors filed a list of only the alleged thirty (30) largest creditors in the cases and did not file schedules or statements of financial affairs, nor a matrix of creditors. On February 27, 2015, the Trustee filed schedules of assets and liabilities and statements of financial affairs for each of the Debtors, using information obtained from documents produced pursuant to Rule 2004 examinations and Debtor records provided by the Federal Authorities (as defined below). Schedule F contains a list of only the user names and country code for Participants.

19. Wanzeler and Merrill were the principals of the Debtors as of the Petition Date. Costa was formerly a principal of the Debtors, at least until he allegedly assigned his interest in the fall of 2013. Shortly after the Trustee was appointed, the United States Department of Justice (“DOJ” and, together with the SEC and HSI, the “Federal Authorities”) indicted Wanzeler and Merrill based upon their involvement in the Debtors’ scheme. Wanzeler has fled the country and is believed to be in Brazil. Merrill was initially detained and has been released pending trial.

20. Prior to the Trustee’s appointment, the Nevada Bankruptcy Court established a bar date for the filing of prepetition claims. On July 2, 2014, the Trustee filed a motion to vacate (the “Motion to Vacate”) the bar date established prior to the transfer of venue. In support of the Trustee’s requested relief, the Motion to Vacate stated that the Trustee intended to develop a protocol for the filing and allowance of claims consistent with the circumstances of the cases, and that such protocol would include a new bar date, procedures for the noticing of the bar date and requirements for submission of claims. The Motion to Vacate was approved by order dated July 3, 2014.

21. The Trustee has retained Kurtzman Carson Consultants (“KCC”) as his claims agent. Even though no bar date has been established, approximately 60,000 proofs of claim, both electronic and hard copy, have been filed with either KCC or the Clerk of the Court

utilizing the standard form proof of claim. Participants have also submitted victim notification forms with the Federal Bureau of Investigation ("FBI") and/or with the Commonwealth of Massachusetts, Secretary of State ("SOS").

III. THE DEBTORS' SCHEME AND THE PONZI SCHEME MOTION

22. As set forth in greater detail in the Ponzi Scheme Motion, at the time of the Trustee's appointment, the Trustee did not have access to any of the Debtors' records and had little assistance from former employees. Through cooperation with Federal Authorities and a painstaking data recovery and analysis project, the Trustee and his advisors assembled a working version of the Debtors' highly complex database and SIG, the principal program that used the database to track Participant activity by User Account. As a result of the Trustee's investigation and review, the Trustee believes that the following factors support the relief requested herein.

23. The Debtors' Participant activity was consolidated with that of Ympactus Comercial, Ltda. ("Ympactus"), the Debtors' Brazilian affiliate that reportedly operated a substantially similar scheme and was shut down by Brazilian authorities in June 2013. In total, the records reflected approximately 17,000,000 User Accounts associated with approximately 2,000,000 Email Addresses. The Trustee was able to separate Debtor Participant activity from Ympactus based upon an analysis of currency and address data fields. As a result of this exercise, the Trustee determined that there are approximately 11,000,000 User Accounts associated with approximately 900,000 Email Addresses in the Debtors' scheme. The Trustee believes there is a valid basis to limit notice only to the Debtors' Participants as determined by the Trustee in accordance with the foregoing analysis.

24. Entrance into the scheme. Participants entered the scheme by purchasing membership plans and opening User Accounts. When opening a User Account, Participants

were directed to complete numerous fields of identifying data. A Participant could open a single User Account or could (and many Participants did) open hundreds or thousands of User Accounts. Participants interacted with the Debtors principally through electronic means, and each User Account was linked to an electronic mail address ("Email Address"). Although there are approximately 11,000,000 User Accounts, there are only 900,000 unique Email Addresses. Each of the 900,000 Email Addresses may represent a single Participant or may represent multiple Participants. Because it appears that some Participants utilized the Email Addresses of other Participants, the number of Participants is unknown but is likely in excess of 1,000,000. Because the Debtors used electronic means as the principal, if not exclusive, mode of communication with Participants, electronic noticing of the Bar Date is appropriate. In addition, a significant number of the names and mailing addresses contained in the User Accounts are clearly unusable for a variety of reasons, including the simple fact that no entries were made for this information by certain Participants, addresses are clearly incorrect (e.g., Rio de Janeiro, Ohio) and other similar reasons.

25. Mechanics of the scheme and typical transactions. Participants earned credits with TelexFree for placing meaningless advertisements on the internet and for recruiting other Participants to join the scheme, which could be redeemed for cash. Participants may also have accumulated credits by purchasing credits from other Participants or by receiving "manual" credits issued by the Debtors. The VoIP Packages were rarely used or sold to non-Participants. Invoices for the purchase of a membership plan or VoIP Package could be satisfied either by cash payment to the Debtors or by the use of accumulated credits from another User Account. A Participant could use credits in an existing User Account to open a new User Account for himself/herself, or could use credits in a User Account to satisfy the invoice of a newly recruited

Participant. In the latter case, the recruited Participant typically paid the invoice for the membership plan directly to the recruiting Participant, rather than to the Debtors. The proposed Participant ePOC requires Participants to itemize amounts paid to, and received from, the Debtors as well as amounts paid to, or received from, other Participants in connection with the Debtors' sale of membership plans.

26. Condition of Debtors' records. While the Trustee has not been able to verify all of the transaction activity in the 11,000,000 User Accounts, sample testing and reconciliation of data contained in SIG supports the accuracy of the transaction data contained therein. Some data fields entered by Participants, however, appear to be incomplete or inaccurate. The proposed Participant ePOC requires input of accurate data that was requested when a Participant opened a User Account, including user name, passcode, phone number, address, and taxpayer identification number. This information is necessary to verify Participant identity and reconcile Participants' claims with the Debtors' records.

27. Ponzi/Pyramid Scheme. The Debtors' operations constituted a massive Ponzi/pyramid scheme. The source of payment to Participants was, almost exclusively, the membership fees paid by later Participants. The VoIP Packages were rarely utilized. The Debtors promised unrealistic returns to Participants in exchange for the placement of meaningless advertisements, with no obligation to sell VoIP Packages. Subject to allowance of the Ponzi Scheme Motion, any claim or portion of claim of Participants based upon accumulated credits in Participants' User Accounts as of the Petition Date will be disallowed, and Participants' claims will be determined on a 'net equity' basis, that is, a netting of amounts paid into the scheme with amounts recovered from the scheme.

IV. CLAIM PROCESS

A. Summary of Claims Process

28. In designing the claims process, the Trustee has taken into account the foregoing matters, including the state of the Debtors' books and records, the fraud inherent in the Debtors' scheme, the unprecedented number of potential claimants, and the costs and time associated with the review and allowance of claims under a variety of different methods. With these considerations in mind, the Trustee requests that the Court approve the claims process as set forth below:

(i) Establish a Bar Date that is not less than ninety (90) days after the portal ("Portal") hosting the ePOC's is operational and the notice of the Bar Date (the "Bar Date Notice") has been served, and order that any claimant who does not file an ePOC through the Portal by the Bar Date shall not have an allowed claim and will not be entitled to participate in the distribution of funds by the Trustee;²

(ii) Authorize the Trustee to serve the Bar Date Notice, in the form attached hereto, (a) via electronic mail to Participants based upon available Email Addresses, (b) via regular mail to claimants who are not Participants and are listed on Schedules D, E, F, and G of the Debtors' schedule of liabilities, and to those Participants who filed a proof of claim with the Court or with KCC, or a victim notification form with the FBI³ on or before September 30, 2015 that did not provide an electronic mail address, and (c) via public notice on the Portal, the KCC website and the websites of certain multi-level marketing associations. Notices shall be provided in English, Spanish, and Portuguese;

² The Trustee will file the Bar Date Notice with the Court, identifying and establishing the Bar Date, after the Portal has become operational.

³ The Trustee requested victim notification data from the SOS but the SOS was not willing to provide this information to the Trustee.

(iii) Order that the submission of an ePOC shall be the sole and exclusive method of filing claims in these cases, approve the proposed content of the Standard ePOC to be filed by non-Participants, and approve the proposed content of the Participant ePOC to be filed by Participants.

B. Bar Date

29. Bankruptcy Rule 3003(c)(3) provides, in pertinent part, that "the court shall fix and for cause shown may extend the time within which proofs of claim or interest may be filed."

30. The establishment of a bar date will promote the expeditious administration of the Debtors' estates. Complete and accurate information as to the nature, validity, and status of claims against the Debtors' estates is necessary to ensure the orderly progression of the Chapter 11 cases and the claims resolution process.

31. A Bar Date that is not less than ninety (90) days after the Bar Date Notice has been served will provide adequate time for creditors to file claims.

32. Claimants other than Participants, such as governmental agencies and trade creditors, will be required to submit a Standard ePOC on or before the Bar Date unless they fall within a limited range of exceptions, as enumerated below:

(a) Any person or entity whose claim is listed on the Debtors' schedules of liabilities provided that (i) the claim is not scheduled as "disputed," "contingent" or "unliquidated"; and (ii) the holder of such claim does not disagree with the amount, nature, and priority of such claim as set forth in the schedules;

(b) Any person or entity whose claim arises from the rejection of an unexpired lease or executory contract, in which case the holder of the claim shall file a proof of claim by the later of (a) the Bar Date, and (b) thirty days after the entry of an order authorizing the rejection of the unexpired lease or executory contract;

(c) Any person or entity whose claim is newly listed as contingent, unliquidated or disputed in any amendment to the schedule of liabilities filed after the date of the order approving this motion, in which case the holder of the claim

shall file a proof of claim by the later of (a) the Bar Date, and (b) thirty days following the filing of the amended schedules.

(d) Any holder of a claim that heretofore has been allowed by order of this Court;

(e) Any person or entity whose claim has been paid in full by the Debtors or the Trustee;

(f) Any holder of a claim for which specific deadlines have previously been fixed by this Court and remain in effect;

(g) Any holder of a claim allowable under § 503(b) and § 507(a) of the Bankruptcy Code as an expense of administration, except that claims under §503(b)(9) shall be filed by the deadline established by the Massachusetts Local Bankruptcy Rules.

33. The foregoing exclusions apply only to non-Participants. Participants will be required to submit a Participant ePOC on or before the Bar Date, without exception.

C. Approval of Form and Manner of Bar Date Notice

34. Electronic notice of the Bar Date Notice is appropriate because of the extraordinary number of Participants in the United States and throughout the world, the condition of the Debtors' records respecting Participants' contact information, and the enormous costs and difficulties associated with attempting to serve the Bar Date Notice by regular mail.

35. The Trustee proposes that the Bar Date Notice will be provided to the Participants (a) electronically via the Email Addresses, and (b) by regular mail notice, by United States postal delivery or international equivalent, to claimants other than the Participants who are listed on Schedules D, E, F, and G of the Debtors' schedules, and to those Participants who filed claims with KCC or the Court, or victim notification forms with the FBI, on or before September 30, 2015 that did not include an electronic mail address. The Bar Date Notice will be provided to Participants, on the KCC website, and on the Portal in English, Spanish, and Portuguese. The

Trustee will also provide public notice of the Bar Date Notice in the following online multi-level marketing websites: *behindmlm.com*, *theponzibook.blogspot.com* and *Ponzitracker.com*.

D. Content of Electronic Proofs of Claim

36. The filing of electronic proofs of claim as the sole and exclusive method of filing claims is appropriate. Electronic filing of claims will ensure that Participant information is consistent as to content and format and will enable claims information to be reconciled with the Debtors' electronic records. Unless a uniform, electronic process for filing and review of claims is established, the process for reviewing and resolving claims will be unduly protracted and prohibitively expensive.

37. The Standard ePOC will contain substantially the same content as the official form B10 proof of claim and is appropriate for use by claimants other than Participants.

38. The proposed Participant ePOC is appropriate because it will request that Participants provide and confirm data in a format that will be consistent and will enable reconciliation against the Debtors' electronic records.

39. Bankruptcy Rule 9009 provides that official forms "shall be observed and used with alterations as may be appropriate." Thus the Court has the authority to approve modifications of proof of claim Form 10 where appropriate. *In re A.H. Robins Co.*, 862 F.2d 1092 (4th Cir. 1988).

40. In addition to providing a Participant with basic information about the claims process, establishing a Portal registration process, and requiring that the claim be attested to, the Participant ePOC will request that a Participant:

- (i) provide his/her current contact information, including physical address, electronic mail address, and phone number;

- (ii) provide and/or confirm personal or business name(s), address(es), phone number(s), Email Address(es), taxpayer identification number(s), User Account name(s), password(s), and bank account information that were utilized by the Participants when establishing the User Account(s);
- (iii) itemize and/or confirm all payments made by a Participant to the Debtors and all payments received by a Participant from the Debtors;
- (iv) itemize and/or confirm all payments made by a Participant to other Participants in connection with the purchase of a membership plan, and all payments made to the Participant by other Participants in connection with the purchase of a membership plan.

E. Basis for Requested Relief

41. Establishment of the Bar Date, approval of the proposed Bar Date Notice and service thereof, approval of the content of ePOC's, and authorization for the Trustee to establish ePOC's consistent with the content in the Motion are all designed specifically to address the unique circumstances of these cases. In devising this claims process, the Trustee conferred with his advisors and other principal constituencies in these cases and undertook an analysis of the data that is available from the Debtors' books and records and the types of transactions in which Participants commonly engaged.

42. The establishment of the Bar Date not less than ninety (90) days after service of the Bar Date Notice is appropriate as it will provide Participants and other claimants with adequate time to submit their ePOC's.

43. The form of the Bar Date Notice and the proposed procedures for providing notice of the Bar Date Notice are appropriate.

44. The proposed content of the ePOC's is necessary and appropriate.

45. The proposed procedures take into significant consideration the due process concerns of claimants. Due process requires "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. The notice must be of such nature as reasonably to convey the required information, and it must afford a reasonable time for those interested to make their appearance." *In re Arch Wireless, Inc.*, 534 F.3d 76 (1st Cir. 2008).

46. Parties who can be identified from the Debtors' records or from claims filed with reliable contact information, will be provided direct notice of the Bar Date Notice, either by electronic mail (as to Participants with Email Addresses in the Debtors' records) or by regular mail (as to non-Participant creditors and Participants who filed claims with KCC or the Court or victim notification forms with the FBI on or before September 30, 2015 that did not provide an electronic mail address), since known creditors are entitled to receive direct notice to the extent possible. *Arch Wireless*, 534 F.3d at 80.

47. The principal reliance upon electronic notice of the Bar Date is both appropriate and necessary. Bankruptcy courts have authorized notice via electronic mail where appropriate under the circumstances. *See In re Natural Products Group, LLC*, case no. 10-10239-BLS (Bankr. D. Del. 2010)(court authorized service of pleadings and notices electronically upon approximately 2,000,000 independent consultants in multi-level marketing case); *In re VarTec Telecom, Inc.*, case no. 04-81694-SAF-11 (Bankr. N.D. Tex. 2004)(authorization to serve pleadings electronically on 130,000 independent representatives in multi-level marketing business). Similarly, electronic notice has been found to comport with requirements of due process in many federal, nonbankruptcy cases. *See, e.g., Securities and Exchange Commission*

v. Rex Venture Group, LLC, d/b/a ZeekRewards.com and Paul Burks, case no. 3:12-cv-519 (W.D.N.C. 2013)(court authorized electronic notice of claims process to upwards of one million participants in multi-level pyramid scheme); *Browning v. Yahoo Inc.*, 2007 WL 4105971 (N.D. Cal. Dec. 27, 2006) (finding that electronic mail notice and publication notice was adequate for members of a class in a class action settlement); *Rio Properties, Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1016 (9th Cir. 2002) (finding service of a complaint via electronic mail valid); *RPost Holdings, Inc. v. Kagan*, 2012 WL 194388, at *2 (E.D.Tex. Jan. 23, 2012) (electronic notice of complaint authorized); *Liberty Media Holdings, LLC v. Vinigay.com*, 2011 WL 810250, at 2-5 (D. Ariz. Mar.3, 2011) (same).

48. To the extent that service upon Email Addresses does not provide notice to Participants, public notice on the KCC website, the Portal, and multi-level marketing websites serves as appropriate constructive notice under the circumstances.

49. The proposed notification procedures are well tailored to provide notice to likely claimants in a cost effective manner, are in accord with the requirements of due process, and should be approved by the Court.

50. The content of the Participant ePOC is essential for the administration of the claims process. The current address and contact information is essential to provide notices in the case and to make distributions. Email Addresses and other information used when opening User Accounts with the Debtors is necessary to identify Participants' User Accounts and to verify claims against the Debtors. Information respecting payments to and from the Debtors and by and between Participants respecting the purchase of membership plans and VoIP Packages is relevant to determining Participants' claims against the estates. Finally, the attestation and acknowledgement is required by Official Form 10; 28 U.S.C. § 2073; *Guide to Judiciary Policy*,

Vol. 1, § 440; Fed. R. Bankr. P. 9009; Fed. R. Bankr. P. 3001(a); 18 U.S.C. §§ 152, 157, and 3571 and will serve as a deterrent to claims fraud.

51. The electronic filing of the ePOC's is appropriate because it serves as an essential role in controlling costs and accelerating distributions to creditors through streamlined administrative procedures. The cost of attempting to manually compare amounts asserted in potentially millions of physical proofs of claim against the Debtors' records is incalculable, particularly given the number of transactions that may be associated with any particular claim. The ePOC ensures that data will be presented in a format that can be sorted and analyzed electronically and that all Participants provide data in a common, readable format. Given the extraordinary number of potential claimants, electronic filing of the claims is the only practical alternative for an efficient and cost effective administration of the claims process in these cases.

52. Other than as allowed herein, the timely submission of the ePOC's should be the exclusive means for claimants to participate in a distribution of funds by the Trustee or other estate representative. Previous submissions of claims to KCC or the Court or victim notification forms to the FBI or SOS are insufficient to be recognized as proofs of claim, and should be disallowed, for several reasons, including the lack of essential Participant information and User Account activity that needs to be reconciled against the Debtors' records. Even if the required data was included in prior submissions, the earlier submissions were not electronic and were not presented in a consistent format that can be easily uploaded and compared to other available information. Finally, the victim notification forms submitted to the FBI do not contain the attestations required by Official Form 10; 28 U.S.C. § 2073; *Guide to Judiciary Policy*, Vol. 1, § 440; Fed. R. Bankr. P. 9009; Fed. R. Bankr. P. 3001(a); 18 U.S.C. §§ 152, 157, and 3571.

53. Subject to allowance of the Ponzi Scheme Motion, (i) any claim or portion of claim of Participants based upon accumulated credits in Participants' User Accounts as of the Petition Date will be disallowed, (ii) Participant claims will be determined on a net equity basis, and (iii) Participants need only file one claim which shall constitute a claim against each of the Debtors. Non-Participants will be required to file a separate Standard ePOC for each Debtor against which they assert a claim.

54. The Bar Date Notice should contain a provision that failure to completely and accurately respond to all of the data requests contained in the Participant ePOC may constitute grounds for disallowance of a claim.

F. Deferral of Claims Determination Issues/Reservation of Rights

55. The development of the content of the ePOC's is necessary to the administration and determination of claims. The electronic noticing of the Bar Date Notice and electronic filing of ePOC's is the only practical method of administering a claims process in these cases. Any other alternative would be prohibitively expensive, thereby reducing the available funds for distribution, and would unduly delay the resolution of claims and the ultimate distribution of funds to creditors. The claims process should not impose any undue burden upon Participants. In fact, the electronic process is in many respects less burdensome than the submission of hard copy proofs of claim because Participants will not incur mailing or copying costs.

56. The Trustee expressly reserves all rights, claims, and defenses. Other than the disallowance of claims for accumulated credits, no rulings are sought respecting the components of an allowable claim.

V. NOTICE

57. The Trustee proposes to serve this Motion upon the Debtors' list of the thirty (30) alleged largest unsecured creditors, the Office of the United States Trustee, and all parties having filed notices of appearance. The Trustee requests that such notice be deemed sufficient for the relief requested.

WHEREFORE, the Trustee respectfully requests that this Court enter an Order in the form attached hereto as Exhibit "A" hereto:

- (i) Establishing a Bar Date not less than ninety (90) days after the Portal is operational and the Bar Date Notice has been served;
- (ii) Approving the content of the ePOC's as set forth herein and authorizing the Trustee to establish the Portal and to design and implement the ePOC's substantially consistent with the content as set forth in the Motion;
- (iii) Approving the Bar Date Notice, in the form attached hereto as Exhibit "B" hereto, and the manner of service as set forth herein, including to those Participants identified as being involved in the Debtors' scheme based upon currency data fields in SIG;
- (iv) Directing that the claim filing process will be exclusively electronic and directing Participants and other claimants to file an ePOC on the Portal, including completion of all data fields, and ordering that a Participant's failure to provide data requested in the Participant ePOC may constitute grounds for disallowance of the claim;
- (v) Finding that previously filed claims with KCC or the Court, or victim notification forms submitted to the FBI and SOS, shall not constitute valid

and timely filed proofs of claim, and that the ePOC filing process set forth herein shall be the exclusive method of submitting a claim against the Debtors' estates; and

(vi) Granting such other and further relief as this Court finds just and proper.

STEPHEN B. DARR,
CHAPTER 11 TRUSTEE,

By his attorneys,

/s/ Andrew G. Lizotte

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Dated: October 7, 2015
695591

EXHIBIT A

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
CENTRAL DIVISION**

In Re:

**TELEXFREE, LLC ,
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A hearing having been held on this ____ day of _____, 2015 on the Motion by Stephen B. Darr, the duly appointed Chapter 11 trustee (the "Trustee") of the bankruptcy estates of TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, Inc. (collectively, the "Debtors" or "TelexFree") for Entry of an Order Fixing Bar Date for Filing Proofs of Claim, Approving form and Manner of Providing Notice, Directing that Claims be Filed Electronically, and Approving Content of Electronic Proofs of Claim (the "Motion"), all parties-in-interest having been heard and due cause appearing therefore, it is hereby ORDERED that:

1. The Motion is approved.

I. Bar Date

2. Except as otherwise provided herein, all persons and entities (including, without limitation, individuals, partnerships corporations, joint ventures, trusts, and governmental units) that assert a claim, as defined in § 101(5) of the Bankruptcy Code (each a “Claim”), against the Debtors which arose on or prior to the filing of the Chapter 11 petitions on April 13, 2014 (the

“Petition Date”) shall file a proof of such Claim in accordance with the procedures set forth below.

3. The deadline for all creditors to file claims (the “Bar Date”) is not less than ninety (90) days after the portal (“Portal”) hosting the electronic proofs of claim (“ePOC’s”) is operational and the notice of the Bar Date (the “Bar Date Notice”) has been served as set forth herein.

II. Form and Manner of Notice

4. The Bar Date Notice, in the form attached hereto, is hereby approved.

5. The Trustee shall serve the Bar Date Notice as follows:

- (a) via electronic mail to Participants based upon available electronic mail addresses (“Email Addresses”) of Participants,
- (b) via regular mail, or international equivalent, to claimants who are not Participants and are listed on Schedules D, E, F, and G of the Debtors’ schedules of liabilities, and to those Participants who filed a proof of claim with the Court or with Kurtzman Carson Consultants (“KCC”), or a victim notification form with the Federal Bureau of Investigation (“FBI”), on or before September 30, 2015 that did not provide an electronic mail address,
- (c) via public notice on the Portal, and the KCC website; and
- (d) Via the multi-level marketing websites *behindmlm.com* and *Ponzitracker.com*.

6. The notices referenced in 5(a) through 5(c) above shall be provided, in their entirety, in Spanish and Portuguese, in addition to English. The notices referenced in 5(d) may be abbreviated and in English only, at the discretion of the Trustee.

7. For purposes of identifying and segregating those Participants who may be part of the Debtors' scheme, as opposed to Ympactus Comercial Ltda., and that are entitled to notice herein, the Trustee may rely upon the currency and country code data fields in the Debtors' books and records, as set forth in the Motion.

8. The foregoing provides due and adequate notice to claimants of the Bar Date and the claims procedures approved herein.

III. ePOC's

9. All creditors, other than Participants, shall be required to submit an ePOC containing substantially the same information as official proof of claim form B10 (the "Standard ePOC") on or before the Bar Date unless they fall within one of the exceptions enumerated below:

(a) Any person or entity whose claim is listed on the Debtors' schedules of liabilities provided that (i) the claim is not scheduled as "disputed," "contingent" or "unliquidated"; and (ii) the holder of such claim does not disagree with the amount, nature, and priority of such claim as set forth in the schedules;

(b) Any person or entity whose claim arises from the rejection of an unexpired lease or executory contract, in which case the holder of the claim shall file a proof of claim by the later of (a) the Bar Date, and (b) thirty days after the entry of an order authorizing the rejection of the unexpired lease or executory contract;

(c) Any person or entity whose claim is newly listed as contingent, unliquidated or disputed in any amendment to the schedule of liabilities filed after the date of the order approving this motion, in which case the holder of the claim shall file a proof of claim by the later of (a) the Bar Date, and (b) thirty days following the filing of the amended schedules.

(d) Any holder of a claim that heretofore has been allowed by order of this Court;

(e) Any person or entity whose claim has been paid in full by the Debtors or the Trustee;

(f) Any holder of a claim for which specific deadlines have previously been fixed by this Court and remain in effect;

(g) Any holder of a claim allowable under § 503(b) and § 507(a) of the Bankruptcy Code as an expense of administration, except that claims under §503(b)(9) shall be filed by the deadline established by the Massachusetts Local Bankruptcy Rules.

10. The foregoing exclusions apply only to non-Participants. Participants will in all instances be required to submit an ePOC in a form to be devised by the Trustee and having content substantially as set forth in the Motion (the “Participant ePOC”) on or before the Bar Date.

11. The content of the ePOC’s is approved and the Trustee is authorized to establish a Portal for the electronic submission of ePOC’s and to design and implement ePOC’s substantially consistent with the content set forth in the Motion.

12. Participants are directed to provide all information requested in the Participant ePOC, and the failure to provide data requested in the Participant ePOC may constitute grounds for disallowance of the claim.

13. Participants need file only a single Participant ePOC, which shall constitute a proof of claim against each of the Debtors.

14. Non-Participants must file a Standard ePOC as to each Debtor against which they assert a claim.

15. Submission of an ePOC through the Portal shall be the sole and exclusive method of filing claims in these cases. Any claims previously filed or hereinafter filed that do not comply with the ePOC process set forth herein shall be disallowed without further order of the Court, including any proofs of claim previously filed with KCC or the Court and any victim notification forms submitted to the FBI or to the Massachusetts Secretary of State.

16. The Trustee expressly reserves all rights, claims, and defenses with respect to any ePOC’s filed.

17. Pursuant to Bankruptcy Rule 3003(c)(2), if the holder of a Claim against the Debtors is required to file an ePOC through the Portal on or before the Bar Date but fails to do so: (a) such holder will be forever barred, estopped, and enjoined from asserting its Claim against the Debtors or their bankruptcy estates (or filing an ePOC with respect thereto), (b) the Debtors and their property will be forever discharged from any and all indebtedness or liability with respect to such Claim, (c) such holder will be barred from voting to accept or reject any chapter 11 plan or participate in any distribution in the Debtors' chapter 11 cases or in any subsequent Chapter 7 cases on account of such Claim, and (d) the Trustee will not be required to provide such holder with further notices with respect to such Claim.

18. The Trustee is authorized and empowered to take such steps and perform such acts as may be necessary to implement and effectuate the terms of this Order.

19. Entry of this Order is without prejudice to the right of the Trustee to seek a further order of this Court fixing a date by which holders of Claims not subject to the Bar Date established herein must file proofs of claim or be barred from doing so.

20. Entry of this Order is without prejudice to the Trustee's rights to request substantive consolidation of the Debtors' estates.

Hon. Melvin S. Hoffman
Chief United States Bankruptcy Judge

Dated: _____
695643

EXHIBIT B

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
CENTRAL DIVISION

In Re:)	
)	
)	Chapter 11
)	
TELEXFREE, LLC,)	Case No. 14-40987-MSH
TELEXFREE, INC.,)	Case No. 14-40988-MSH
TELEXFREE FINANCIAL, INC.,)	Case No. 14-40989-MSH
)	
Debtors.)	Jointly Administered

NOTICE OF DEADLINE FOR FILING ELECTRONIC PROOFS
OF CLAIM AND CLAIMS PROCEDURES

On April 13, 2014, TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, Inc. (together, the “Debtors”) filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code with the United States Bankruptcy Court for the District of Nevada. The cases were transferred to the United States Bankruptcy Court for the District of Massachusetts (the “Court”) on May 9, 2014 and are being jointly administered under TelexFree, LLC, case no. 14-40987-MSH. On June 6, 2014, Stephen B. Darr was appointed Chapter 11 trustee (the “Trustee”).

PLEASE TAKE NOTE that on _____, the Court entered an order approving the *Motion by Chapter 11 Trustee for Entry of Order Fixing Bar Date for Filing Proofs of Claim, Approving Form and Manner of Notice, Directing that Claims be Filed Electronically, and Approving Content of Electronic Proofs of Claim (the “Bar Date Motion”)*, establishing certain deadlines for submission of claims in the Debtors’ Chapter 11 cases. On _____, the internet portal (“Portal”) for submission of electronic proofs of claim became operational and can be located at _____. Pursuant to the order approving the Bar Date Motion, _____ at 4:30 p.m.. (prevailing Eastern Time) has been established as the deadline for each person or entity (including individuals, partnerships, corporations, estates, trusts, joint ventures, and governmental units, wherever located) to file proofs of claim against the Debtors. Proofs of claim must be submitted electronically through the Portal.

The Bar Date and the procedures set forth below for filing proofs of claim apply to any claim as defined in Section 101(5) of the Bankruptcy Code (each a “Claim”), against the Debtors which Claim arose on or prior to the filing of the Chapter 11 petitions on April 13, 2014 (the “Petition Date”), except for holders of those Claims listed in Section 4 below that are specifically excluded from the Bar Date filing requirements.

1. **WHO MUST FILE A PROOF OF CLAIM**

If you have a Claim against the Debtors that arose on or prior to the Petition Date, and such Claim is not one of the types described in Section 4 below, you must file an electronic proof of such Claim (each a “Proof of Claim”) to share in distributions from the Debtors’ bankruptcy estates and to vote on a Chapter 11 plan that may be filed by the Trustee. Claims based on acts or omissions of the Debtors that occurred before the Petition Date must be filed on or prior to the Bar Date, as set forth herein, even if

such Claim is not now fixed, liquidated, or certain or did not mature or become fixed, liquidated or certain before the Petition Date.

Under section 101(5) of the Bankruptcy Code and as used in this Notice, the word “Claim” means: (a) a right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (b) a right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured. As used in this Notice, the term “Schedules” means schedules of assets and liabilities filed by the Debtors, as they may have been amended, pursuant to Federal Rule of Bankruptcy Procedure 1007.

2. WHAT TO FILE

If you were a Participant in the Debtors’ scheme (that is, you purchased a TelexFree membership plan or VoIP package), you must file the electronic proof of claim specifically designated for Participants (the “Participant ePOC”) through the Portal on or before the Bar Date. Detailed instructions for completing the Participant ePOC are included in the Portal.

If you were not a Participant, you must file a claim using the standard electronic proof of claim (the “Standard ePOC”) through the Portal on or before the Bar Date. Detailed instructions for completing the Standard ePOC are included in the Portal. [The Participant ePOC and Standard ePOC are referred to together as the “ePOC’s”].

All ePOC’s must be signed by the holder of such Claim or, if the holder of such Claim is not an individual, by an authorized agent of the holder of such Claim. It must be completed in English and be denominated in United States currency.

3. WHEN AND WHERE TO FILE

Except as provided for herein, all Proofs of Claim must be filed so as to be received through the Portal on or before _____.

The address for the Portal is _____.

All Proofs of Claim will be deemed filed only when an ePOC is received by the Portal on or before the Bar Date. No Proofs of Claim may be delivered by regular mail or facsimile. No Proofs of Claim should be filed with the Court.

4. WHO NEED NOT FILE A PROOF OF CLAIM

Participants: All Participants must file a Participant ePOC on or before the Bar Date. Participants need file only a single Participant ePOC, which shall constitute a claim against each of the Debtors.

Non-Participants: Creditors who are not Participants must file a Standard ePOC on or prior to the Bar Date unless the creditor is one of the following:

- (a) Any person or entity whose claim is listed on the Debtors’ schedules of liabilities provided that (i) the claim is not scheduled as “disputed,” “contingent” or “unliquidated”; and (ii) the holder of such claim does not disagree with the amount, nature, and priority of such claim as set forth in the schedules;

(b) Any person or entity whose claim arises from the rejection of an unexpired lease or executory contract, in which case the holder of the claim shall file a proof of claim by the later of (a) the Bar Date, and (b) thirty days after the entry of an order authorizing the rejection of the unexpired lease or executory contract;

(c) Any person or entity whose claim is newly listed as contingent, unliquidated or disputed in any amendment to the schedule of liabilities filed after the date of the order approving this motion, in which case the holder of the claim shall file a proof of claim by the later of (a) the Bar Date, and (b) thirty days following the filing of the amended schedules.

(d) Any holder of a claim that heretofore has been allowed by order of this Court;

(e) Any person or entity whose claim has been paid in full by the Debtors or the Trustee;

(f) Any holder of a claim for which specific deadlines have previously been fixed by this Court and remain in effect;

(g) Any holder of a claim allowable under § 503(b) and § 507(a) of the Bankruptcy Code as an expense of administration, except that claims under §503(b)(9) shall be filed by the deadline established by the Massachusetts Local Bankruptcy Rules.

5. CONSEQUENCES OF FAILURE TO FILE AN EPOC BY THE BAR DATE OR FAILURE TO COMPLETE THE EPOC

THE FILING OF AN EPOC ELECTRONICALLY THROUGH THE PORTAL IS THE ONLY VALID MEANS OF SUBMITTING A PROOF OF CLAIM AGAINST THE DEBTORS. UNLESS YOU ARE EXCEPTED FROM FILING AN EPOC BY SECTION 4 ABOVE, YOU MUST FILE AN EPOC ON OR BEFORE THE BAR DATE. ANY PARTY THAT FAILS TO TIMELY FILE AN EPOC ON THE PORTAL ON OR BEFORE THE BAR DATE WILL BE BARRED FROM ASSERTING SUCH CLAIM AGAINST THE DEBTORS OR THEIR BANKRUPTCY ESTATES, AND FROM PARTICIPATING IN ANY DISTRIBUTION OF FUNDS IN THESE CASES ON ACCOUNT OF SUCH CLAIM. CLAIMS PREVIOUSLY FILED WITH KURTZMAN CARSON CONSULTANTS, LLC OR THE COURT, OR VICTIM NOTIFICATION FORMS SUBMITTED TO THE FEDERAL BUREAU OF INVESTIGATION OR MASSACHUSETTS SECRETARY OF STATE, WILL NOT BE CONSIDERED ALLOWED CLAIMS. PARTICIPANTS MUST COMPLETE ALL DATA REQUESTS ON THE PARTICIPANT EPOC, AND FAILURE TO DO SO MAY RESULT IN DISALLOWANCE OF THE CLAIM.

**6. THE DEBTOR'S SCHEDULES AND ACCESS THERETO
[THIS SECTION IS NOT APPLICABLE TO PARTICIPANTS]**

You may be listed as the holder of Claim against the Debtors on the Schedules. If you rely on the Schedules, it is your responsibility to determine that your Claim is accurately listed on the Schedules.

If you agree with the nature, amount, and status of your Claim in the Schedules, and if your Claim is not described as “disputed,” “contingent,” or “unliquidated,” you need not file a Standard ePOC.

Otherwise, or if you decide to file a Standard ePOC with respect to such Claim, you must do so before the Bar Date in accordance with the Order.

Copies of the Schedules are available at the Bankruptcy Court's internet website- www.mab.uscourts.gov. A login and password to the Court's Public Access to Electronic Court Records ("PACER") are required to access this information and can be obtained through the PACER Service Center- www.pacer.psc.uscourts.gov. Copies of the Schedules may also be examined between the hours of 9:00 A.M. and 4:00 P.M., Monday through Friday at the Office of the Clerk of the Bankruptcy Court, located at the Harold Donohue Federal Building and Courthouse, 595 Main Street, Worcester, MA 01608.

Respectfully Submitted,
STEPHEN B. DARR,
CHAPTER 11 TRUSTEE,
By his counsel,

/_____
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Dated: _____
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